

[The Voting Rights Act 50 Years Later](#)

New York Law Journal (Online)

August 6, 2015 Thursday

Copyright 2015 ALM Media Properties, LLC All Rights Reserved Further duplication without permission is prohibited

New York Law Journal

Length: 1796 words

Byline: Jerry Vattamala

Body

Fifty years ago today, President Lyndon Johnson signed the historic Voting Rights Act of 1965 (VRA), often referred to as the "crown jewel" of the civil rights legislation passed by Congress in the 1960s. The VRA prohibits discrimination on the basis of race or color in voting, and has been remarkably effective in protecting the voting rights of minorities.

New Yorkers have a special connection to the VRA. In the summer of 1964, two young white, Jewish New Yorkers, Andrew Goodman and Michael Schwerner, traveled to Mississippi to register black residents to vote as part of "Freedom Summer." At the time, approximately 97 percent of blacks in Mississippi were not registered to vote. Andrew Goodman was 20 years old and Michael Schwerner was 24.

After arriving in the town of Philadelphia in Neshoba County, Mississippi, the young New Yorkers were joined by native Mississippian James Chaney, who was only 18 years old. The three young men traveled to the site of a black church that had just been firebombed by the Ku Klux Klan. On June 21, 1964, white supremacists, with the help of local police, beat and murdered Goodman, Schwerner and Chaney. Their bodies would not be found until August. Their murders captured national attention and highlighted the violent opposition to voting rights for blacks in the South. Goodman and Schwerner were able to vote in New York without any problems, yet they chose to travel to one of the most racist and violent areas of our country to register people to vote.

Other Northern whites came down to the South as well, in the face of violence and hatred. James Reeb, a Unitarian minister from Boston, traveled to Alabama to assist in the march from Selma to Montgomery. He was beaten to death by four white supremacists on March 9, 1965, two days after "Bloody Sunday" on the Edmund Pettus Bridge, where marchers attempting to cross the bridge were violently beaten by law enforcement on horseback, and ultimately prevented from continuing the march to Montgomery. Reeb was a father of four.

Viola Liuzzo was a mother of five from Detroit, who traveled to Alabama to shuttle marchers during the march from Selma to Montgomery. At the conclusion of the march, Liuzzo was shot in the head while driving marchers back to Selma, the only white woman murdered for her participation in the march and her support for voting rights for blacks.

The murders of Goodman, Schwerner, Reeb, Liuzzo and other white people, many from Northern cities and states, like New York, captured national attention and ultimately spurred the passage of the Voting Rights Act of 1965 on Aug. 6, 1965.

While several states and local jurisdictions across the country had been adept at creating new ways to disenfranchise voters of color, the VRA addressed this discrimination. Section 2 of the VRA is used by individuals against jurisdictions that discriminate after the acts occur, and often require the individual to expend an enormous amount of resources to litigate on a case by case basis. Section 2 is permanent and applies nationwide.

The Voting Rights Act 50 Years Later

Section 5 required states and counties that had a history of discrimination to have new voting changes "precleared" or pre-approved by the U.S. Attorney General or the federal district court in Washington, D.C., before the changes could be implemented. The burden was on the jurisdiction to prove that its proposed voting change would not have a discriminatory or "retrogressive" effect on minority voting rights. Section 5 was never intended to be permanent; it was implemented as a temporary provision, to be extended by Congress as necessary.

A state or jurisdiction was "covered" under Section 5 if it had a history of discrimination by looking at past practices, registration and voting rates. This formula resulted in nine states, almost all in the South, being covered in their entirety. Section 5 also provided a mechanism to give notice of the voting changes proposed by covered jurisdictions and for private citizens and groups to submit comments regarding a jurisdiction's proposed voting changes.

The Supreme Court upheld the constitutionality of Section 5 several times over the course of the last 50 years. Section 5 was originally enacted for only five years and has been extended by Congress up until 2006, when it was extended for another 25 years. In 1975, the VRA was broadened to address voting discrimination against members of "language minority groups" under Section 203. The language minority groups that received protection were Asian Americans, Latinos, Native Americans and Alaskan Natives.

Section 203 of the Voting Rights Act requires jurisdictions, based on a formula using census data, to provide translated ballots and voting materials as well as oral language assistance for voters who are limited English proficient. In 2006, Sections 5 and 203 (the special provisions) were extended for another 25 years. Congress conducted extensive hearings to determine whether it should extend the special provisions and if they were still necessary, totaling over 15,000 pages of evidence. The reauthorization of these provisions was approved by the Senate 98-0, and by the House 390-33.

The special provisions have been used effectively to stop discriminatory actions before they occur. Section 5 has stopped more than 1,000 discriminatory voting changes since 1982, and prevented statewide voting changes from being implemented in Florida, Texas and South Carolina in 2012.

The language minority provisions, including Section 203, have also been effective for protecting voters of color, beyond black voters in the South. The Asian American Legal Defense and Education Fund (AALDEF) was able to use Sections 5 and 203 in New York City to protect the voting rights of Asian Americans. Three counties of New York City-New York, Kings, and the Bronx-were covered by both Sections 5 and 203.

When jurisdictions were covered under both Section 5 and Section 203, the combined provisions formed a powerful tool to ensure that language minorities had full access to political participation.

Section 5 played a pivotal role in shaping the Chinese Language Assistance Program in New York City, which was first adopted after three counties in the city gained coverage under Section 203 in 1992. Limited English proficient Chinese American voters typically know the candidates by their transliterated names.

In 1994, AALDEF asked the Justice Department to deny preclearance of New York City's Chinese Language Assistance Program, which failed to include candidate names in Chinese on the voting machine ballots. As a result, New York City was forced to provide fully translated bilingual ballots, affecting 55,000 Chinese American voters.

Section 5 has also prevented changes to voting systems that would have retrogressive effects on Asian American voters. For example, before 2001, in New York City the only electoral success for Asian Americans was on local community school boards. In each election-in 1993, 1996, and 1999-Asian American candidates ran for the school board and won. In 1998, New York submitted to the DOJ for preclearance a switch from a "preference voting" system, where voters ranked their choices, to a "limited voting" system, where voters could select only four candidates for the nine-member board, and the nine candidates with the highest number of votes were elected.

AALDEF submitted comments to the DOJ opposing the change and urged denial of preclearance because Asian American voters would be in a worse position to elect candidates of their choice. Because New York was covered by Section 5, the DOJ denied preclearance and prevented the discriminatory voting change from taking effect.

Section 5 also ensures that voters receive notice of poll site changes, even in emergencies. For example, in 2001, primary elections in New York City were rescheduled due to the 9/11 attacks on the World Trade Center. The week before the rescheduled primaries, AALDEF discovered that a certain poll site, I.S. 131, a school located in the heart of Chinatown and within the restricted zone in lower Manhattan, was being used by the Federal Emergency Management Agency for services related to the World Trade Center attacks.

The Board of Elections chose to close down the poll site and submitted the proposed change to the DOJ for preclearance under Section 5, but failed to inform voters of the change. The board made no announcements in Chinese-language newspapers and did not inform limited English proficient voters about this change. After AALDEF complained about the disruptive impact of the poll site change, the DOJ issued an objection and informed the board that the change could not take effect. On primary day, hundreds of votes were cast at the original Chinatown poll site. Without Section 5, many of these voters would have lost their right to vote.

On June 25, 2013, the U.S. Supreme Court ruled by a 5-to-4 vote in *Shelby County v. Holder*, that Section 5's coverage formula (Section 4(b)) is unconstitutional because it was no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states. The court did not strike down Section 5, but without Section 4(b), no jurisdiction can be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

The dissent by Justice Ruth Bader Ginsburg found that Congress had sufficient evidence to determine that the coverage formula remained responsive to current needs. Ginsburg acknowledged that discrimination in voting has decreased in the covered jurisdictions since the Voting Rights Act's enactment, but it attributed much of that decrease to the law itself, noting that "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

Two hours after the *Shelby County* decision, Texas reenacted its statewide voter ID law that had been struck down under Section 5. The D.C. District Court had ruled that the voter ID law would have a discriminatory impact on voters of color and was imposed with a discriminatory purpose. Numerous other formerly covered jurisdictions are now free to make voting changes without any federal oversight.

Many people died in the struggle to secure voting rights for all people in this country. The successful organizing efforts of the 1960s led to the passage of the Voting Rights Act. *Shelby County* has eviscerated the heart of the VRA. New Yorkers and all Americans should be vocal in defending the right to vote, in honor of Goodman, Schwerner and Chaney. On this 50th anniversary, Congress must act now to enact a coverage formula and restore Section 5 of the Voting Rights Act.

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: CIVIL RIGHTS (90%); RACE & RACISM (90%); VOTERS & VOTING (90%); RACISM & XENOPHOBIA (90%); DISCRIMINATION (89%); ELECTION LAW (89%); THIS DAY IN HISTORY (78%); LEGISLATION (78%); DISCRIMINATION LAW (78%); MINORITY GROUPS (78%); LEGISLATIVE BODIES (73%); LAW ENFORCEMENT (71%); HEAD INJURIES (62%); POLICE FORCES (52%)

Geographic: NEW YORK, USA (94%); ALABAMA, USA (92%)

Load-Date: August 6, 2015